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1 given Defendant's blatant breach of the Agreement, it is not commercially  
2 unreasonable. The notion that a creditor's misguided trust of a debtor is somehow  
3 wrongful as to the debtor is right out of Alice's looking glass.

4 Defendant makes reference to the wire transfer documents by which it  
5 admittedly received the Hundred Million Yen (¥100,000,000) and states that they were  
6 "for the payment of fish" and that this somehow contradicts the terms of the  
7 Agreement. A review of the documents shows that they each contain boxes labeled  
8 "PURPOSE" and "MERCHANDISE" in which the words "ADVANCE PAYMENT" and  
9 "TUNA" are respectively typed in. This adds nothing to Defendant's argument. The  
10 documents are nothing more than a vehicle for the transfer of money and the  
11 statements therein were made to the bank, not Defendant, and in no way reflect on the  
12 Agreement. Even if they did, they do not contradict it. Loans are in essence an  
13 advance of money with the expectation of eventual repayment. The term "TUNA"  
14 does nothing more than indicate what the overall business venture, of which the loan  
15 was a part, was about.

17 Perhaps the biggest flaw in Defendant's attempt to create a material issue of  
18 fact is its failure to allege what its version of the facts is. Mr. Kamiyama states in his  
19 Declaration that, "I have never made a payment on this transaction because it is not a  
20 loan." What is missing is any allegation of what the transaction was, if it was not a  
21 loan. Western capitalism generally recognizes two (2) forms of investment: debt and  
22 equity. A debt transaction involves the loan of money with the money to be repaid at  
23 an agreed time or times with interest. An equity transaction involves the purchase of  
24 an ownership interest in the subject enterprise with the right to share in any profits.  
25

1 Such transactions virtually all involve documents such as subscription agreements or  
2 stock certificates setting forth the percentage of ownership purchased and the various  
3 rights associated with it.

4 There is absolutely no allegation as to precisely what Plaintiff KAIOH was  
5 getting in return for its Hundred Million Yen (¥100,000,000) nor has there been any  
6 documentation to back it up. If Defendant is asserting the existence of some third form  
7 of investment, it has done a very poor job of describing it. Defendant, in essence, is  
8 asking this Court to disregard an unambiguous written loan agreement and find that  
9 Plaintiff KAIOH invested One Hundred Million Yen (¥100,000,000) to obtain an  
10 unknown interest in an unspecified enterprise with an unknown return at an unknown  
11 date upon the occurrence of unstated contingencies. Plaintiff KAIOH may have been  
12 imprudent in lending money to Defendant without adequate security but it was not  
13 delusional.  
14

15  
16 **B. NO BUSINESS LICENSE WAS REQUIRED**

17 Defendant asserts that this claim is barred by the Guam Business License Law.  
18 The only citation is to "11 G.C.A.". Presumably Defendant is referring to 11GCA  
19 §70130(d), which reads as follows.

20 (d) no commercial activity (including operating or leasing of  
21 real property) doing business on Guam without a business  
22 license may file suit in Guam courts until such time that a  
23 business license is obtained. No person engaged in  
24 commercial activity without a business license may use the  
25 courts to enforce, directly or indirectly, any obligation, lien, or  
contract incurred during the period of such commercial activity  
without a business license...

11 GCA §70130(d).

1  
2 Initially, the question arises, what are "Guam courts"? Are they only courts  
3 created by the Government of Guam or do they include any court that is physically  
4 located on Guam, which would include this Court. Assuming for purposes of this  
5 Motion that the statute applies to this Court, the issue remains whether the lending of  
6 money by a business in Japan to a business on Guam, constitutes business done on  
7 Guam. The Supreme Court of Guam has answered this question in the negative in  
8 EIE Guam Corporation v. Long Term Credit Bank of Japan, 1998 Guam 6.

9 In that case, the Court held that a bank in Japan, which lent money that was  
10 used to build a hotel on Guam, was not doing business on Guam so far as the  
11 requirement of a business license was concerned. The Court noted that the basic  
12 purpose of §70130 is to enforce collection of the gross receipts tax and that the bank,  
13 in this instance, was not required to pay this.  
14

15 [17] This statute, however, is not applicable to a foreign  
16 bank engaging in a transaction listed in 11 GCA § 106730.  
17 The purpose of 11 GCA § 70130 is to obtain compliance and  
18 collection of gross receipts taxes. 11 GCA § 70130(f) requires  
19 a court to "liberally construe subsections (b) through (e) of this  
20 Section in favor of . . . the business person and . . . ignore  
21 technical deficiencies if the courts find there has been  
substantial compliance with the business license laws, rules,  
and regulations and if the courts find that the landlord or  
business person has filed on a timely basis . . . gross receipts  
tax returns fully reporting all accountable revenues from the  
activity concerned for the periods in question . . . ."

22 [18] However, a foreign bank conducting a transaction  
23 pursuant to 11 GCA § 106730 is not subject to gross receipt  
taxes. . .

24 [19] It is apparent the types of banks required to pay gross  
25 receipts taxes would be those located on island including  
foreign banks licensed pursuant to § 106725. A foreign bank

1 so licensed would be required under 11 GCA § 106724 to  
2 keep separate accounting records of assets, liabilities,  
3 income, expenses, etc. to enable the determination of the  
4 gross receipts tax. Moreover, such a bank maintains  
accounting records locally that permit the audit and  
verification of calculations of gross tax receipts. *Id.*

5 [20] The statute also requires that the gross tax calculation  
6 be based on income from all sources. It is highly unlikely that  
7 Guam would undertake the collection of taxes on all income  
8 sources of a foreign bank because of its loan secured by  
mortgage property. Equally difficult to imagine would be  
allowing a bank such as LTCB to deduct from income all of its  
worldwide expenses.

9 Thus, the Business License law and the associated penalties for its violation  
10 have no application where either: 1) all GRT that is required to be paid is in fact paid;  
11 or 2) no GRT is required to be paid. Plaintiff KAIOH's only connection with Guam is  
12 the lending of money to a business on Guam, and is therefore not subject to the gross  
13 receipts tax. Since the purpose of §70130 is to promote tax collection by the  
14 Government of Guam, and not to permit private debtors to abscond from obligations  
15 that they freely entered into, it simply does not apply.  
16

17 Dated this 19<sup>th</sup> day of March, 2003.

18 **McKEOWN • VERNIER • PRICE • MAHER**  
19 **Attorney for Plaintiff**  
**KAIOH SUISAN CO., LTD.**

20  
21 By: 

22 **TERENCE E. TIMBLIN**  
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Dated this 19<sup>th</sup> day of March, 2003.

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